

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 10 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MADHI VIBHAG KHAND UDYOG SAHAKARI MANDLI LIMITED

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR JP SHAH for Petitioner

MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE M.C.PATEL

Date of decision: 17/06/98

ORAL JUDGEMENT (Per C.K.Thakker, J)

The following question was referred for our opinion:

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in its conclusion that the claim for deduction of

Rs.1,78,077 u/s. 80P(2)(a)(ii) and of
Rs.1,14,112/- u/s. 80P(2)(d) aggregating
Rs.2,92,189/- was not allowable since total
income was nil after adjustment of carried
forward unabsorbed depreciation and development
rebate ?".

2. Mr.Shah, Learned Counsel for the Assessee contended that the question is covered in favour of assessee by a decision of Madras High Court in Commissioner of Wealth-tax, Tamil Nadu-II V. K.Lakshmi, 142 ITR 657. He contended that Section 80 P of the Income Tax Act, 1961 grants deduction in respect of depreciation on development rebate and the Tribunal has committed an error of law in not allowing the said benefit in favour of assessee. On the other hand, the learned counsel for the revenue supported the decision of the Tribunal. He also submitted that the point is concluded by a pronouncement of the Supreme Court in Commissioner of Income-Tax V. Kotagiri Industrial Co-operative Tea Factory Ltd; 224 ITR 604.

3. We have considered the rival submissions of the parties. We have also perused the decision of the High Court of Madras. In our opinion, however, the Tribunal has not committed any error of law. Considering Section 80 B(5) as interpreted by the Supreme Court in Kotagiri Industrial Co-operative Tea Factory Ltd; (Supra), the Tribunal was right in passing the impugned order.

4. Almost in similar circumstances, the Supreme Court held that before considering the matter of deduction under Section 80 B (5), the Income Tax Officer rightly set off the credit loss of earlier years in accordance with Section 42 of the Act and finding that the same exceeded, the ITO did not allow the deduction under section 80 P of the Act. The principles laid down by the Supreme Court in Kotagiri Industrial Co-operative Tea Factory Ltd will apply to the facts of the present case.

5. We, therefore, see no reason to uphold the contention on behalf of the assessee. Accordingly, the reference is answered in the affirmative. i.e. in favour of the Revenue and against the Assessee. No order as to costs.

(C.K.Thakker, J)

(M.C.Patel, J)

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